



**-BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 121 and 135**

**[Docket No.: FAA-2019-0360; Notice. No. 19-05]**

**RIN 2120-AL12**

**Removal of Check Pilot Medical Certificate Requirement**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action would update regulatory text so as to remove inconsistencies applicable to check pilots and flight instructors in domestic, flag, and supplemental operations and flight instructors in commuter and on demand operations so that check pilots and flight instructors can continue to perform their functions in aircraft without a medical certificate, unless they are serving as required flightcrew members. The FAA also proposes to remove the medical certificate requirement for check pilots in commuter and on demand operations who perform their functions in aircraft and are not serving as required flightcrew members. Removing the medical certificate requirement would enable pilots who are otherwise qualified, to function as check pilots in aircraft.

**DATES:** Send comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Send comments identified by docket number FAA-2019-0360 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- Mail: Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at 202-493-2251.

**Privacy:** In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

**Docket:** Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Nancy Lauck Claussen, Aviation Safety Inspector, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington DC 20591; telephone: 202-267-8166; email: [nancy.l.claussen@faa.gov](mailto:nancy.l.claussen@faa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Authority for this Rulemaking**

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code (49 U.S.C.). Subtitle I, Section 106 describes the authority of the FAA Administrator. The FAA issues this proposed rule under the authority Congress granted to the FAA Administrator in 49 U.S.C. 106. Section 106(f) vests final authority in the Administrator for carrying out all functions, powers, and duties of the administration relating to the promulgation of regulations and rules.

Subtitle VII of title 49 of the United States Code, Aviation Programs, describes in more detail the scope of the agency's authority. This rule is issued under the authority granted to the Administrator by Congress in 49 U.S.C. sections 44701 and 44705. Section 44701(a)(5) requires the Administrator to promote safe flight of civil aircraft in air commerce by prescribing regulations and setting minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security. In addition, § 44701(d)(1)(A) specifically requires the Administrator, when prescribing safety regulations, to consider "the duty of an air carrier to provide service with the highest possible degree of safety in the public interest." Finally, § 44705 requires the Administrator to issue air carrier operating certificates that contain terms necessary to ensure safety in air transportation.

### **Executive Summary**

Currently, the FAA does not require part 121 check pilots and flight instructors in airplanes and part 135 flight instructors in aircraft (airplanes and rotorcraft) to hold medical certificates, unless serving as required flightcrew members. However, this requirement is not clear because of inconsistencies in the regulatory text in parts 121 and 135. This action would

amend the regulatory text to remove these inconsistencies so that it is clear that check pilots and flight instructors conducting checking and training functions in aircraft may serve without medical certificates, as long as they are not required flightcrew members.

Additionally, current regulations require check pilots under part 135 who perform their duties in aircraft to hold a medical certificate even if they are not serving as required flightcrew members. As a result, some experienced pilots who would otherwise qualify to perform part 135 check pilot functions in an aircraft, but who are not medically eligible to hold a medical certificate, are limited to conducting check pilot functions in flight simulation training devices (FSTDs). This rule proposes to eliminate the requirement for a medical certificate for check pilots who are not serving as required flightcrew members. This proposed change would increase the number of experienced pilots who would be able to qualify as part 135 check pilots on aircraft.

Table 1 summarizes the provisions included in this rule, the sections affected and impacts.

**Table 1. Summary of proposed changes, sections affected and impacts**

Provision	Summary	Sections Affected	Impact
<b>Check Pilot Medical Certificate Requirement</b>			
Remove the check pilot medical certificate requirement for 135 check pilots (aircraft).	<ul style="list-style-type: none"> <li>Removes the requirement for a medical certificate in part 135 for check pilots (aircraft) who are not serving as required flightcrew members.</li> <li>Restructures section to remove duplicative requirements.</li> </ul>	135.337(b)(5), (e)  135.337	Possible small cost savings for pilots who choose to stop obtaining a medical certificate.
Update current medical	<ul style="list-style-type: none"> <li>Removes requirement</li> </ul>	121.411(b)(5)	No impact.

Provision	Summary	Sections Affected	Impact
<b>Check Pilot Medical Certificate Requirement</b>			
certificate requirements for check pilots and flight instructors in part 121 and flight instructors in part 135.	<p>for third-class medical certificate and explicitly states that only those part 121 check pilots (airplane) or flight instructors (airplane), or part 135 flight instructors (aircraft), serving as required flightcrew members must have appropriate medical certificates to serve as such.</p> <ul style="list-style-type: none"> <li>Adds “required” before “flightcrew member” to emphasize that medical certificates are only required for check pilots and flight instructors who are serving as required flightcrew members.</li> <li>Restructures section to remove duplicative requirements.</li> </ul>	<p>121.412(b)(5) 135.338(b)(5), (e)</p> <p>135.337(e) 135.338(b)(5), (e)</p> <p>135.338</p>	
<b>Conforming and Miscellaneous Changes</b>			
Update nomenclature.	<ul style="list-style-type: none"> <li>Updates nomenclature in part 135 to change “check airmen” to “check pilots”, “check airman” to “check pilot”, and “simulator” to “FSTD”, where appropriate.</li> <li>Updates nomenclature to change “Class I”, “Class II”, and “Class III” medical</li> </ul>	<p>135.113 135.297(c)(2) 135.321(a)(2) 135.323(a)(1), (a)(4), (c) 135.324(b)(4) 135.337(a), (b), (e), (f) 135.338(a), (f) 135.339(a),(c), (d), (e), (g) 135.340(a)(2)</p> <p>121.411(b)(5); 121.412(b)(5), (f)(1); 135.337(b)(5); 135.338(b)(5)</p>	No impact.

Provision	Summary	Sections Affected	Impact
<b>Check Pilot Medical Certificate Requirement</b>			
	certificates to “first-class”, “second-class”, and “third-class” medical certificates, respectively.		

## I. Background

All pilots serving in part 121 and part 135 operations are required to complete competency checks and proficiency checks on a regular basis to ensure each pilot’s competency in operating the specific aircraft and conducting instrument operations. These checks are conducted by *check pilots*, airmen approved by the FAA who have the appropriate knowledge, training, experience, and demonstrated ability to evaluate and to certify the knowledge and skills of other pilots. The role of the check pilot is to ensure that the flightcrew member has met competency standards before the check pilot releases the flightcrew member from training and to ensure that the flightcrew member maintains those standards while remaining in line service. A check pilot must be knowledgeable in the applicable requirements of 14 CFR parts 61, 91, 110, 119, and part 121 or 135, other applicable FAA policies, safe operating practices, and the certificate holder’s policies and procedures.

A *flight instructor* is an airman designated by a part 121 or part 135 certificate holder who has the appropriate knowledge, training, experience, and demonstrated ability to instruct flightcrew members in a flight training segment of that certificate holder’s training program.

Flight instructors and check pilots typically do not serve as required crewmembers during training or checking in an FSTD. This is because they are typically staffing an instructor station from which they can oversee the simulation. They may serve as required flightcrew

members during training or checking in aircraft, provided they are qualified as a pilot in command (including medical certificate requirements), and are also designated and authorized to perform training or checking functions in the specific aircraft being used. A flight instructor or check pilot is considered a required flightcrew member if the person receiving instruction is not qualified to act as pilot in command or if the type certificate of the aircraft on which instruction is being given requires more than one pilot flightcrew member and no other qualified pilot is on board.<sup>1</sup>

Prior to 1996, the agency required medical certificates for flight instructors and check pilots performing such functions, even if not serving as required flightcrew members.<sup>2</sup> In 1996, the FAA published the final rule, Training and Qualification Requirements for Check Pilots and Flight Instructors.<sup>3</sup> The rule recognized that some experienced part 121 and 135 pilots who would otherwise qualify as flight instructors or check pilots but were not medically eligible to hold a medical certificate could not perform their functions even in simulators.<sup>4</sup> The rule removed the medical certificate requirement altogether for flight instructors and check pilots in parts 135 and 121 who perform their functions in flight *simulators*.<sup>5</sup> However, the regulatory text was less clear as to the medical certificate requirement for flight instructors who perform their functions in aircraft in parts 135 and 121, and part 121 check pilots.

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<sup>1</sup> Letter of Interpretation to Willmot White from Carl Schellenberg, Assistant Chief Counsel, Regulations and Enforcement Division (Oct 5, 1978). Letter of Interpretation to Ivan Grau from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Oct. 1, 2010); Letter of Interpretation to Louis Glenn from Rebeca B. MacPherson, Assistant Chief Counsel for Regulations (Dec. 1, 2009).

([https://www.faa.gov/about/office\\_org/headquarters\\_offices/agc/practice\\_areas/regulations/interpretations/](https://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/regulations/interpretations/)).

<sup>2</sup> See e.g., *Air Taxi Operators and Commercial Operators*, 42 FR 43490 (Aug. 29, 1977) and *Air Taxi Operators and Commercial Operators*, 43 FR 46742, 46777 (Oct. 10, 1978).

<sup>3</sup> *Training and Qualification Requirements for Check Pilots and Flight Instructors*, 61 FR 30734 (June 17, 1996).

<sup>4</sup> *Id.* at 30734.

<sup>5</sup> *Id.* at 30735.

## **II. Discussion of the Proposed Rule**

### **A. Part 121 Check Pilot/Flight Instructor and Part 135 Flight Instructor Medical Certificate Requirements**

Currently, the agency implements §§ 121.411, 121.412, and 135.338 such that part 121 check airmen (airplane), part 121 flight instructors (airplane), and part 135 flight instructors (aircraft)<sup>6</sup> are not required to hold a medical certificate unless serving as required flightcrew members. There are, however, inconsistencies within the regulatory text of these provisions that has caused confusion. The agency proposes to resolve these inconsistencies with this NPRM.

Amendments to the regulatory text implementing the medical certificate requirements for check airmen and flight instructors in part 121 training programs (§§ 121.411 and 121.412) and flight instructors serving in aircraft in part 135 training programs (§ 135.338), have resulted in inconsistencies within each of these sections. For example, §§ 121.411(b)(5) and 121.412(b)(5) state that check pilots and flight instructors (airplane) must hold at least a third-class medical certificate unless serving as required crewmembers; however, §§ 121.411(e) and 121.412(e) state that check pilots and flight instructors who do not hold an appropriate medical certificate may function as check airmen, but may not serve as flightcrew members in operations under this part. In part 135, § 135.338(b)(5) states that flight instructors (aircraft) must hold at least a third-class medical certificate; however, § 135.338(e) states that an airman

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<sup>6</sup> The FAA's regulations distinguish between check pilots or flight instructors performing their functions in an airplane (under part 121) or aircraft (airplanes or rotorcraft under part 135), or in a flight simulator.



who does not hold a medical certificate may function as flight instructor in an aircraft if functioning as a non-required crewmember.

Allowing a part 121 check pilot, or a part 121 or part 135 flight instructor to serve as such in an airplane, without a medical certificate, when not serving as a required flightcrew member, has no negative effect on safety. Except in some circumstances in aircraft in part 135 operations, neither the check pilot nor the flight instructor sit at the controls for the aircraft unless serving as a required flightcrew member. Further, pilots serving as required flightcrew members must be fully qualified to serve as such, and must have the appropriate medical certificate. If a check pilot or flight instructor is not a required flightcrew member, they are not necessary for the operation and the flight may proceed whether or not they are present. Thus, requiring a medical certificate for check pilots and flight instructors who are not serving as required flightcrew members is an unnecessary burden. Moreover, there has been no degradation in the safe operation of aircraft resulting from the current application of the regulations during the estimated 8 years the agency has allowed eligible check airmen and flight instructors to serve without medical certificates if not serving as required crewmembers. Therefore, the FAA has determined the changes in this proposed rule would have no adverse impact on safety.

Accordingly, the FAA proposes to amend §§ 121.411(b)(5) and 121.412(b)(5) to remove the language requiring the check pilots and flight instructors to hold at least a third-class medical certificate unless serving as a required crewmember. These paragraphs will retain the requirement that the check pilots and flight instructors must hold a first- or second-class medical certificate, as appropriate, if serving as required flightcrew members.

Similarly, the FAA proposes to amend § 135.338(b)(5) to remove the language requiring flight instructors to hold at least a third-class medical certificate. For clarity and consistency with part 135 requirements to serve as a required flightcrew member, the FAA proposes to add the requirement that the flight instructor must hold a first or second-class medical certificate, as appropriate, if serving as a required flightcrew member.

#### B. Part 135 Check Pilot Medical Certificate Requirement

Currently, § 135.337, requires check airmen serving in part 135 in an aircraft to hold a third-class medical certificate, even if the check pilot is not serving as a required flightcrew member. Unlike the three previously discussed sections of 14 CFR (i.e., §§ 121.411, 121.412 and 135.338), § 135.337 is unambiguous in establishing this third-class medical certificate requirement.

The FAA proposes to remove the requirement for a check pilot serving in part 135 in an aircraft to hold a third-class medical certificate unless the check pilot is serving as a required flightcrew member. A check pilot would need to hold an appropriate medical certificate only if serving as a required flightcrew member. Removing the requirement for a third-class medical certificate for check pilots (aircraft) who are not serving as required flightcrew members would not negatively affect safety for the same reasons provided in explaining the proposal to remove the third-class medical certificate requirement for check pilots in part 121 training and similarly, would provide regulatory relief from an unnecessary burden.

This proposal would reduce regulatory burdens for part 135 operators. Removing the medical certificate requirement would provide greater operational flexibility to certificate holders and ensure that otherwise qualified, experienced persons who meet all of the training and

qualification requirements necessary to function as check pilots would have the opportunity to do so.

A. Miscellaneous and Conforming Amendments

The FAA proposes the following amendments to improve the clarity and consistency of parts 135 and 121. This action proposes to change “check airmen” and “check airman” to “check pilots” and “check pilot”, respectively, throughout part 135, as appropriate. In addition, this rule proposes to update the text in §§ 135.337 and 135.338 by changing “simulator” to “FSTD” where appropriate.

This action proposes to change “Class I”, “Class II”, and “Class III” medical certificates to “first-class”, “second-class”, and “third-class” medical certificates respectively, to align with the terminology used in part 61.

This action proposes to add “required” before “flightcrew member” in §§ 135.337(e) and 135.338(b)(5) and (e) to emphasize that medical certificates are only required for check pilots and flight instructors who are serving as required flightcrew members.

This action proposes to change the structure of §§ 135.337 and 135.338, which currently list the check pilot and flight instructor (aircraft) and check pilot and flight instructor (simulator) requirements separately. Since this proposed rule would remove the medical certificate requirement altogether, the only difference in the requirements between check pilot (aircraft) and check pilot (simulator) would be the recency of experience requirement. Therefore, the requirements for both check pilot (aircraft) and check pilot (simulator) would be listed once in § 135.337(b), and the recency of experience requirement for check pilot (aircraft) would be listed separately in § 135.337(c). Similarly, the requirements for flight instructor (aircraft) and flight

instructor (simulator) would be listed once in § 135.338(b), and the recency of experience requirement for flight instructor (aircraft) would be listed separately in § 135.338(c).

The FAA acknowledges that similar types of miscellaneous and conforming changes that are necessary for part 135 may be necessary for part 121. The FAA will consider proposing those changes to § 121.411 and § 121.412 in a separate rulemaking action.

### **III. Regulatory Notices and Analyses**

#### **A. Regulatory Evaluation**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

In conducting these analyses, the FAA has determined that this proposed rule would: (1) have savings and no additional costs, (2) not be an economically “significant regulatory action” as defined in section 3(f) of Executive Order 12866, (3) not have a significant economic impact on a substantial number of small entities; (4) not create unnecessary obstacles to the foreign commerce of the United States; and (5) not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

As previously discussed, the FAA has determined the changes in this proposed rule would have no adverse impact on safety. The FAA has found that by allowing a part 121 check pilot, or a part 121 or part 135 flight instructor to serve as such in an airplane, without a medical certificate, when not serving as a required flightcrew member, has no negative effect on safety. Except in some circumstances in aircraft in part 135 operations, neither the check pilot nor the flight instructor sit at the controls for the aircraft unless serving as a required flightcrew member. Further, pilots serving as required flightcrew members must be fully qualified to serve as such, and must have the appropriate medical certificate. If a check pilot or flight instructor is not a required flightcrew member, they are not even necessary for the operation and the flight may proceed whether or not they are present. Thus, requiring a medical certificate for check pilots and flight instructors who are not serving as required flightcrew members would result in an unnecessary burden. Moreover, there has been no degradation in the safe operation of aircraft resulting from the current application of the regulations during the estimated 8 years the agency has allowed check airmen and flight instructors to serve without medical certificates if not serving as required crewmembers.

As of June of 2018, there are roughly 1,035 part 135 check pilots.<sup>7</sup> Out of 1,035 part 135 check pilots, there are roughly 496 part 135 check pilots, who do not hold a medical certificate and who are therefore limited to performing check pilot duties in a flight simulator. This proposed rule would enable these check pilots, who are otherwise qualified, but may have become ineligible for a medical certificate during their employment, to function as check pilots in aircraft. While this proposed rule would expand the opportunities for these check pilots, there is not enough information on the demand for check pilots to perform their duties in an aircraft to quantify the impacts of this enabling opportunity. For example, some companies only use simulators to perform check pilots duties while others use a combination of simulators and aircraft. The FAA requests additional information and data on the expanded opportunities for affected check pilots.

Additionally, removing the requirement for a medical certificate could generate cost savings by allowing part 135 check pilots, with valid medical certificates, to discontinue obtaining medical certificates. There are approximately 539 part 135 check pilots with valid medical certificates. Based on age and a pilot's medical condition, which determines the frequency of a medical examination, check pilots would save approximately 0.5 hours per pilot to complete the medical application (MedXpress), 0.5 hours per pilot in travel time to see an Aviation Medical Examiner (AME), and one hour for the actual medical examination.<sup>8</sup>

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<sup>7</sup> National Vital Information Subsystem(NVIS) database, June 2018.

<sup>8</sup> Estimated durations of time and miles traveled to and from examinations taken from Alternative Pilot Physical Examination and Education Requirements Regulatory Evaluation. <https://www.regulations.gov/document?D=FAA-2016-9157-0009>

Additional savings include vehicle operating costs of 0.17 cents per mile<sup>9</sup> based on 40 miles traveled to and from the examination, and \$117 paid to the AME for the medical examination.<sup>10</sup> The estimated value of time for a check pilot is \$111 per hour<sup>11</sup> resulting in potential savings per affected check pilot of \$346 per medical certificate.<sup>12</sup>

Approximately 457 check pilots, out of the 539 check pilots with valid medical certificates, are age 40 and over. Pilots under the age of 40 renew their third-class medical certificate every five years compared to every two years for pilots age 40 and over. The FAA assumes that most pilots who would voluntarily discontinue their medical certificates are age 40 and over as this age bracket accounts for 85 percent of the check pilot population with valid medical certificates. Additionally, older applicants are more likely to apply for special issuance medical certificates, granted to applicants who do not meet the established medical standards but demonstrate they can perform without endangering public safety, than their younger counterparts.<sup>13</sup> Information is limited on the number of check pilots that would allow their medical certificates to expire. However, the FAA estimates that only 5 to 10 percent would no longer obtain medical certificates since check pilots still need to maintain a valid medical certificate to pilot an aircraft professionally and recreationally or serve as required flight crew.

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<sup>9</sup> Internal Revenue Service (IRS) Standard Mileage Rate for 2017, 0.17 cents per mile driven for medical or moving purposes; <https://www.irs.gov/newsroom/2017-standard-mileage-rates-for-business-medical-and-moving-announced> Dec.13, 2016

<sup>10</sup> \$117 aid to AME taken from Alternative Pilot Physical Examination and Education Requirements Regulatory Evaluation. <https://www.regulations.gov/document?D=FAA-2016-9157-0009>.

<sup>11</sup> Bureau of Labor Statistics (BLS), *National Industry-Specific Occupational Employment and Wage Estimates*, Occupational Code 53-2011 Airline Pilots, Copilots, and Flight Engineers, May 2017 [https://www.bls.gov/oes/current/naics4\\_488100.htm](https://www.bls.gov/oes/current/naics4_488100.htm) - includes BLS Employee Compensation as of June 2017

<sup>12</sup> Total savings per check pilot per medical certificate = \$117 fee per pilot + \$55.5 per pilot to complete the application + \$111 per pilot to complete the examination + \$55.5 per pilot to travel to and from the examination + \$6.8 in vehicle operating costs.

<sup>13</sup> <https://www.federalregister.gov/documents/2007/04/10/E7-6652/modification-of-certain-medical-standards-and-procedures-and-duration-of-certain-medical>

The FAA requests comment on this estimate. At 5 percent this would be 23 check pilots and at 10 percent this would be 46 check pilots. For affected check pilots age 40 and over, who would potentially take advantage of this proposed rule, this could result in undiscounted savings of \$23,874 or \$47,748 respectively, over a five year period of analysis as shown in the table below.<sup>14</sup>

**Table 1. Estimated Yearly Undiscounted Savings for Check Pilots Age 40 and Over - Medical Certificate Renewal Every 2 Years**

Year	23 Check Pilots	46 Check Pilots
1	\$7,958	\$15,916
2	----	----
3	\$7,958	\$15,916
4	----	----
5	\$7,958	\$15,916
Total	\$23,874	\$47,748

This proposed rule also updates the current regulatory text under which, the FAA allows check pilots in part 121 and flight instructors in parts 121 and 135 to serve without a medical certificate, unless they are required flightcrew members, and updates nomenclature. While the FAA does not currently require that part 121 check pilots and flight instructors and part 135 flight instructors hold medical certificates, as discussed earlier, these regulations are not clear.

The FAA has, therefore, determined that this proposed rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866.

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<sup>14</sup> This savings to part 135 check pilots would be at the expense of the medical practitioner.



## B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule would relieve part 135 check pilots from having to obtain at least a third-class medical certificate when performing check pilot duties, in an aircraft, as long as they are not required flight crew. This change could provide cost savings to a few part 135 check pilots without additional costs. The proposed rule also would clarify related FAA regulations without substantive effect. Thus, the expected outcome would be a small positive impact on any small entity affected by this rulemaking action.

Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking would not result in a significant economic impact on a substantial number of small entities.

#### C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it would have only a domestic impact and therefore no effect on international trade.

#### D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$155.0 million in lieu of \$100 million. This rule would not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

#### E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

The existing information collection associated with all check pilot and flight instructor medical certificates in parts 121 and 135 was approved under OMB control number 2120-0034. The information collection is used to collect medical certificate information to determine whether applicants are medically qualified to perform the duties associated with the class of medical certificate sought. The FAA has determined that removing the medical certificate requirement for part 135 check pilots (aircraft) who are currently eligible for a medical certificate, but may choose to allow their certificate to expire, would result in a negligible reduction in the information collection, as pilots would still need to maintain a valid medical certificate to pilot an aircraft or serve as required flight crew. The FAA has determined that there would be no reduction in the information collection associated with part 121 check pilots and flight instructors and part 135 flight instructors. The FAA has also determined that there would be no new requirement for information collection associated with this rule.

#### F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the

corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5-6.6f and involves no extraordinary circumstances.

**IV. Executive Order Determinations**

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a “significant energy action” under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

#### D. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This proposed rule is expected to be an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule's economic analysis.

### **IV. Additional Information**

#### A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the

closing date for comments. The agency may change this proposal in light of the comments it receives.

Proprietary or Confidential Business Information: Commenters should not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the FOR FURTHER INFORMATION CONTACT section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

#### B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

- Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
- Visiting the FAA's Regulations and Policies web page at [http://www.faa.gov/regulations\\_policies](http://www.faa.gov/regulations_policies) or
- Accessing the Government Publishing Office's web page at <http://www.gpo.gov>.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by

calling (202) 267-9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced above.

## **List of Subjects**

### 14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Transportation.

### 14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety.

## **The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

### **PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS**

1. The authority citation for part 121 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40113, 40119, 41706, 42301 preceding note added by Pub. L. 112–95, sec. 412, 126 Stat. 89, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44729, 44732; 46105; Pub. L. 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note); Pub. L. 112–95 126, Stat 62 (49 U.S.C. 44732 note).

2. Amend § 121.411 by revising paragraph (b)(5) to read as follows:

**§121.411 Qualifications: Check airmen (airplane) and check airmen (simulator).**

\* \* \* \* \*

(b) \* \* \*

(5) Holds a first-class or second-class medical certificate, as appropriate, if serving as a required flightcrew member;

\* \* \* \* \*

3. Amend § 121.412 by revising paragraphs (b)(5) and (f)(1) to read as follows:

**§121.412 Qualifications: Flight instructors (airplane) and flight instructors (simulator).**

\* \* \* \* \*

(b) \* \* \*

(5) Holds a first-class or second-class medical certificate, as appropriate, if serving as a required flightcrew member; and

\* \* \* \* \*

(f) \* \* \*

(1) Fly at least two flight segments as a required crewmember for the type of airplane within the 12-month period preceding the performance of any flight instructor duty in a flight simulator (and must hold a first-class or second-class medical certificate as appropriate); or

\* \* \* \* \*

**PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND  
OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT**

4. The authority citation for part 135 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40113, 41706, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 44730, 45101–45105; Pub. L. 112–95, 126 Stat. 58 (49 U.S.C. 44730).



5. Amend § 135.337 by revising the section heading and paragraphs (a)(1) through (a)(3), the introductory text of paragraph (b), and (b)(5) through (f) to read as follows:

**§135.337 Qualifications: Check pilots.**

(a) \* \* \*

(1) A check pilot (aircraft) is a person who is qualified to conduct flight checks in an aircraft or FSTD for a particular type aircraft.

(2) A check pilot (simulator) is a person who is qualified to conduct flight checks in an FSTD for a particular type aircraft.

(3) Check pilot (aircraft) and check pilot (simulator) are those persons who perform the functions described in §§ 135.321(a) and 135.323(a)(4) and (c).

(b) No certificate holder may use a person, nor may any person serve as a check pilot in a training program established under this subpart unless, with respect to the aircraft type involved, that person—

\* \* \* \* \*

(5) Holds a first-class or second-class medical certificate, as appropriate, if serving as a required flightcrew member; and

(6) Has been approved by the Administrator for the check pilot duties involved.

(c) No certificate holder may use a person, nor may any person serve as a check pilot (aircraft) in a training program established under this subpart unless, with respect to the aircraft type involved, that person has satisfied the recency of experience requirements of § 135.247.

(d) Completion of the requirements in paragraphs (b) (2), (3), and (4) of this section, as applicable, must be entered in the individual's training record maintained by the certificate holder.

(e) A medical certificate is not required for a person to serve as a check pilot, unless that check pilot is a required flightcrew member in an operation under this part.

(f) A check pilot (simulator) must accomplish the following—

(1) Fly at least two flight segments as a required crewmember for the type, class, or category aircraft involved within the 12-month preceding the performance of any check pilot duty in an FSTD; or

(2) Satisfactorily complete an approved line-observation program within the period prescribed by that program and that must precede the performance of any check pilot duty in an FSTD.

\* \* \* \* \*

6. Amend § 135.338 by revising the section heading and paragraphs (a)(1) through (a)(2), the introductory text of paragraph (b), and (b)(4) through (f) to read as follows:

**§135.338 Qualifications: Flight instructors.**

(a) \* \* \*

(1) A flight instructor (aircraft) is a person who is qualified to instruct in an aircraft, or FSTD for a particular type, class, or category aircraft.

(2) A flight instructor (simulator) is a person who is qualified to instruct in an FSTD for a particular type, class, or category aircraft.

\* \* \* \* \*

(b) No certificate holder may use a person, nor may any person serve as a flight instructor in a training program established under this subpart unless, with respect to the type, class, or category aircraft involved, that person—

\* \* \* \* \*

(4) Has satisfactorily completed the applicable training requirements of § 135.340; and

(5) Holds a first-class or second-class medical certificate, as appropriate, if serving as a required flightcrew member.

(c) No certificate holder may use a person, nor may any person serve as a flight instructor (aircraft) in a training program established under this subpart unless, with respect to the type, class, or category aircraft involved, that person has satisfied the recency of experience requirements of § 135.247.

(d) Completion of the requirements in paragraphs (b)(2), (3), and (4) of this section, as applicable, must be entered in the individual's training record maintained by the certificate holder.

(e) A medical certificate is not required for a person to serve as a check pilot, unless that check pilot is a required flightcrew member in an operation under this part.

(f) \* \* \*

(1) Fly at least two flight segments as a required crewmember for the type, class, or category aircraft involved within the 12-month period preceding the performance of any flight instructor duty in an FSTD; or

(2) Satisfactorily complete an approved line-observation program within the period prescribed by that program preceding the performance of any flight instructor duty in an FSTD.

\* \* \* \* \*

7. In part 135, remove the word “airmen” and add, in its place, the word “pilots” in the following places:

- a. Section 135.321 paragraph (a)(2);
- b. Section 135.323 paragraph (a)(4);

- c. Section 135.324 paragraph (b)(4); and
  - d. Section 135.339 section heading, and paragraphs (c) through (e) and (g).
8. In part 135, remove the word “airman” and add, in its place, the word “pilot” in the following places:
- a. Section 135.113 introductory text;
  - b. Section 135.297 paragraph (c)(2);
  - c. Section 135.323 paragraphs (a)(1) and (c);
  - d. Section 135.339 paragraphs (a), (c)(1), (d); and
  - e. Section 135.340 paragraph (a)(2).

Issued in Washington, DC, under the authority of 49 U.S.C. §§ 106(f), 44701(a)(5), and 44705, on May 17, 2019.

Robert C. Carty

Deputy Executive Director, Flight Standards Service

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